

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HAROLD GAMBY, BERYLLIN GAMBY,

Plaintiffs

CASE NO. 06-11020

-v-

HON. MARIANNE O. BATTANI

EQUIFAX INFORMATION SERVICES,
LLC, et al.,

Defendants.

**ORDER DENYING DEFENDANT, FIRST NATIONAL BANK OF OMAHA'S MOTION
TO STRIKE PLAINTIFFS' MOTION FOR RULE 37 SANCTIONS DOCKET NO. 265**

Defendant asks the Court to strike a motion filed by Plaintiffs for Rule 37 sanctions (Doc. No. 277). For the reasons that follow, Defendant's motion is **DENIED**.

A few days before trial was set to begin, Plaintiffs filed a sealed motion requesting sanctions under Rule 37 (Doc. No. 265). Because Defendant had not reviewed the motion nor had the opportunity to respond, the Court informed the parties that it would not be considering the motion at the time set for oral argument on pending motions in limine. The case proceeded to trial. Defendant contends that its success at trial renders the motion moot. The Court disagrees.

Rule 37(c)(1) does not establish any express time limits within which a motion for sanctions must be filed. Although unreasonable delay may render such a motion untimely, here, Plaintiffs did file the motion prior to trial. See Brandt v. Vulcan, Inc., 30 F.3d 752, 756 (7th Cir. 1994) (observing that, in the context of Rule 37(b), "unreasonable delay" standard applies even in the absence of a specified time limit); Mercy v. County of Suffolk, New

York, 748 F.2d 52, 56 (2d Cir. 1984) (“[A] motion for Rule 37 sanctions should be promptly made, thereby allowing the judge to rule on the matter when it is still fresh in his mind.... Indeed, the motion should normally be deemed waived if it is not made prior to trial. . . .”).

Plaintiffs have asked the Court to impose sanctions on Defendant for abuses during discovery. Plaintiffs maintain that the discovery abuses they challenged on the eve of trial are connected to Defendant’s success at trial. The Court finds Plaintiffs are entitled to consideration of their motion on the merits. Accordingly, Defendant’s motion is **DENIED**.

IT IS SO ORDERED.

s/Marianne O. Battani
HON. MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Date: January 7, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served upon counsel of record on this date by ordinary mail and/or electronic filing.

s/Bernadette M. Thebolt
Case Manager